No. 12,155

IN THE

United States Court of Appeals
For the Ninth Circuit

Filipino Federation of America,
Incorporated,
Appellant,
vs.
Stanley Nicholson, a minor, by Edward J. Nicholson, next friend and guardian ad litem,
Appellee.

On Appeal from the Supreme Court of the
Territory of Hawaii.

REPLY BRIEF FOR APPELLANT.

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Pernau-Walsh Printing Co., San Francisco

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ARGUMENT.

THAT THIS HONORABLE APPELLATE COURT SHOULD OVERRULE AND REVERSE THE DECISION OF THE SUPREME COURT OF THE TERRITORY OF HAWAII CONCERNING THE INTERPRETATION OF SECTION 9557 OF THE REVISED LAWS OF HAWAII, 1945, BECAUSE THERE WAS MANIFEST ERROR; BUT THAT REGARDLESS OF WHETHER OR NOT THE ERROR COMMITTED WAS MANIFEST, THE DECISION SHOULD BE OVERRULED AND REVERSED.

Appellant denies the contentions of appellee as stated in his brief, for and because of the following reasons hereinafter set forth:

It is noted, first, that in the brief of the appellee there is no denial that there has been error committed

by the Supreme Court of Hawaii, but his entire brief is based upon the allegation that there has been no *manifest* error committed. Therefore, appellant, in answering, assumes by inference that appellee admits that there was error, but that the error committed was not *manifest*. Appellant re-submits and emphasizes that there *was manifest error* committed by the Supreme Court of Hawaii, in that whenever a writ of error is refused and an appeal dismissed for failure to comply literally with the provisions of a statute, that this penalizes the appellant, creates a forfeiture, and constitutes *manifest* error.

It is noted that appellee, in support of his argument that the interpretation of Section 9557 by the Supreme Court of Hawaii did not constitute manifest error, quotes the cases of *Kuapuhi et al. v. Pa et al.,* 31 Haw. 623; *W. Au Hoy v. Ching Mun Shee et al.,* 33 Haw. 239; *Akana v. Espinda,* 33 Haw. 314; and *Marks v. Waiahole Water Co., Ltd.,* 36 Haw. 188. All of the aforementioned group of cases have been carefully weighed, distinguished and discounted by appellant in its opening brief, and, therefore, it is submitted, should not be given any particular weight or consideration, since appellant, as heretofore stated, has indicated fully the judicial status of these cases in Hawaii. Furthermore, the case of *Susan Laffoon v. Lamont Alonzo Laffoon,* 37 Haw. 107, cited by appellee in his brief should not be considered as having any probative bearing on the matter of whether the requirements of Section 9557, Revised Laws of Hawaii, 1945, are jurisdictional or procedural, since *Laffoon v. Laffoon* does not even discuss or raise this primary question.

However, assuming solely for the purpose of argument that the error committed by the Supreme Court of Hawaii was not manifest, appellant submits that the following cases nevertheless give this Honorable Court the requisite authority and precedent to exercise its sole judgment.

In *Carcadden v. Territory of Alaska,* 105 F. 2d 377, (1939), which was an appeal from a judgment of the District Court of the Territory of Alaska, dismissing a claim made by the appellant to property declared escheated to the Territory on ground that the claim was barred by limitation, this Court held that in reviewing decisions of the District Court of the Territory of Alaska, the Circuit Court of Appeals exercises *independent judgment with respect to general, local and federal questions and review of decisions of Court on general or local law is not limited to cases of manifest error.* (Emphasis added.) This holding, then, results in only one conclusion, to-wit: that the Circuit Court of Appeals, in reaching its decision is unfettered by the decisions of the trial Court, and can and should properly exercise its independent judgment in curing any errors committed by the Territorial Supreme Court, *irrespective of whether the error is "manifest" or not.* (Emphasis supplied.)

Furthermore, in *Whitmer v. El Paso & S. W. Co.* (Tex., 1912), 201 F. 193, 119 C.C.A. 637, it was held that a decision of the Court of last resort of a territory construing a statute of that territory is entitled to respect by a Court of the United States, but is *not so controlling like a decision of a State Court of last resort.* (Emphasis ours.)

In this connection, appellant would like to point out that while judicial authority to the effect that a Court of the United States should be bound by the interpretations placed upon state statutes by the highest Court of a State, the reason for the rule does not apply where the Territories of the United States are concerned in that they are creatures of Congress, and necessarily subservient thereto, whereas the several States of the United States occupy a vastly different role, being sovereign in so far as they exercise such powers as are not granted to the United States by the Constitution. Therefore, it would seem that the situation would call for the application of the maxim of *cessante ratione legis cessat ipsa lex.*

> "The Circuit Court of Appeals shall have * * * jurisdiction to review by appeal, final decisions * * * (4) In the Supreme Court of the Territory of Hawaii."
>
> U.S.C.A. Tit. 28, Sec. 225A.

The cases cited by the appellee enunciating the rule that the power of a Federal Appellate Court to reverse rulings of a territorial Court on law or fact is limited to cases of manifest error, appear to result in or amount to judicial legislation, if the result is to limit appellate review of decisions of territorial Courts only in cases of manifest error, inasmuch as the statutes do not so limit the federal appellate jurisdiction to cases of manifest error only. See, *Whitmer v. El Paso & S. W. Co.,* cited supra.

Appellee apparently wishes this Honorable Court to summarily dispose of and dismiss this appeal and

waive the matter away without much ado on the basis of his allegation that there was no manifest error.

In the case of *De Castro v. Board of Com'rs of San Juan* (1944), 64 S.Ct. 1121, 322 U.S. 451, 88 L.Ed. 1384, the Supreme Court of the United States said with respect to a case arising from Porto Rico:

> "The rule that a rule announced by an insular court will be rejected only on a clear showing that it does violence to recognized principles of local law or established practices of the local community *is not a mere mechanical devise that requires or admits, save in exceptional cases, of the summary disposition of appeals from such courts, nor does it minimize the importance or dignity of the appellate function in such cases,* but it imposes on reviewing courts a peculiarly delicate task of examining and appraising the local law in its setting with the sympathetic disposition to safeguard in matters of local concern, the adaptability of the law to local practices and needs."

Any serious consideration of the present issue, by reviewing the Hawaiian cases decided, subsequent to the enactment of the 1939 statute, reveals a total silence of the provisions of this very pertinent statute. Counsel for appellant was attorney for the appellee in *Laffoon v. Laffoon,* supra, whose motion that the appeal should be dismissed for failure of a bond was granted. In that case, the 1939 statute was not referred to or considered; as a matter of fact, its enactment was unknown at that time to counsel and not even discussed by the Court. Therefore, manifestly, appellant contends that the decision of the Supreme Court of Hawaii, as herein presented for review

by this Honorable Court, because of a distinct failure on the part of the printer, or those persons in charge of arranging the annotation of this statute, effected, or led, the local Court into a positive oversight and resultant error; and it is contended further that due process is violated by this local decision, which in effect seeks to perpetuate a precedent of error.

CONCLUSION.

Upon the reasoning herein advanced and authorities cited, appellant urges that the Supreme Court of Hawaii erred in quashing the writ of error and in denying petition for rehearing, and accordingly respectfully requests again, that this matter be remanded to the Supreme Court of the Territory of Hawaii with appropriate directives; and further, appellant respectfully urges, in view of the authorities and arguments presented hereinbefore, that appellee's charges that the appeal herein was sued out "merely to delay proceedings on said judgment," is the very type of irresponsible argument that due process must remedy.

Dated, Honolulu, T. H.,
June 13, 1949.

Respectfully submitted,
Arthur K. Trask,
Attorney for Filipino Federation of America, Incorporated, Appellant.